APPENDIX

230 N.E. 2d 837

The People of the State of Illinois,
Appellee,

v.

Donald F. Underhill, Appellant.

No. 40283.
Supreme Court of Illinois.
Sept. 29, 1967.
Rehearing Denied Nov. 27, 1967.

The Circuit Court of Kane County, John S. Peterson, J., found defendant guilty of burglary, and he appealed. The Supreme Court, Kluczynski, J., held that fact that defendant and his wife were not promptly presented before magistrate after their arrest did not itself vitiate their confessions at their joint trial but was merely factor to be considered on question of voluntariness of the confessions.

Affirmed.

1. *Criminal Law* — 1158(4)

Trial court determination as to admissibility of confession will not be disturbed unless manifestly against weight of evidence or unless court has committed abuse of discretion.

2. *Criminal Law* — 519(8)

Fact that defendant and his wife were not promptly presented before magistrate after their arrest did not of itself vitiate their confessions at their joint trial, but was merely factor to be considered on question of voluntariness of the confessions. S.H.A. ch. 38, § 109-1.

3. *Criminal Law* — 531(3)

Evidence supported finding that burglary confessions of husband and wife were voluntarily given.

4. *Courts* — 100(1)

Where defendant was tried for burglary before date of *Miranda* decision which is applied prospectively, and where fundamental fairness did not require application of Miranda standards, standards laid down in *Miranda* were not applicable to defendant's case.

5. *Criminal Law* — 404(1)

In view of fact that burglary confession of defendant was admissible, exhibits whose relevance was established by the confession were likewise admissible.

6. *Criminal Law* — 404(1)

Exhibit of keys, one of which would open back door of shop that was burglarized, was properly admitted for sake of comparison with second exhibit of key taken from person of defendant at time of his arrest and which defendant allegedly admitted using to gain entrance to the burglarized shop to establish if the key found on defendant could have opened door to shop on date of burglary.

7. *Criminal Law* — 1036(1)

Defendant could not on appeal challenge admissibility of confession without limiting instruction, where defense counsel was apprised of nature of co-defendant's confession at preliminary hearing on motion to suppress, and where at no time, including post-trial motion, was request made for separate trial or objection taken to admission of the confession.

8. *Criminal Law* — 1043(2)

Defendant must make timely objection to introduction of confession on specific ground or he is not in position to complain of his admission upon review of case.

(Appendix)

9. *Criminal Law* — 824(8)

Trial court does not have duty of instructing jury that confession, when admitted, may be considered only as against its author, unless co-defendant desiring such instruction requests it.

10. *Criminal Law* — 728(2)

Remarks of prosecutor not objected to by defendant are considered waived.

11. *Criminal Law* — 730(7, 13)

Improper closing remarks of prosecution suggesting that locks on burglarized shop had been changed subsequent to burglary and that defendant had committed, in addition to his two prior burglary convictions, "one other offense", did not constitute reversible error, where defendant's objections to both remarks were sustained and jury was instructed to disregard any statement not supported by the evidence, and where, with regard to second remark, record revealed that defendant himself on direct examination admitted prior arrest for assault, thereby vitiating impropriety of the second remark.

12. *Burglary* — 29, 41(4)

Unauthorized entry may be proved by circumstantial evidence, and accompanying intent to commit an offense may be inferred from fact that a larceny was actually committed. S.H.A. ch. 38, § 19-1.

13. *Criminal Law* — 535(2)

Voluntary confession may be considered along with other evidence to establish corpus delicti.

14. *Burglary* — 41(1, 2)

Evidence proved corpus delicti of burglary and also established defendant's criminal liability for the burglary beyond reasonable doubt. S.H.A. ch. 38, § 19-1.

(Appendix)

15. *Criminal Law* — 1159(3)

Supreme Court will not substitute its judgment for that of trier of facts where evidence is merely contradictory including situation where alibi is offered on behalf of accused.

16. *Criminal Law* — 1166½(1)

Failure of defendant's chosen counsel to exercise care and skill in trial of case generally does not afford basis for reversal of conviction.

17. *Criminal Law* — 641.13(8)

Failure of defendant's chosen counsel to suppress confession of co-defendant, to object to testimony of co-defendant and move to strike it, to ask for separate trial because of co-defendant's confession, to tender cautionary instruction to jury, and to object to certain remarks of prosecution in its final argument did not render defendant's representation so inadequate as to violate standards laid down for private counsel.

Starke, Anglin, Savage, Frazin, Stewart & May, Chicago (Howard T. Savage, Chicago, of counsel), for appellant.

William R. Ketcham, State's Atty., Elgin (W. Ben Morgan, Asst. State's Atty., of counsel), for appellee.

Kluczynski, Justice.

Defendant, Donald F. Underhill, was convicted of burglary in the circuit court of Kane County and sentenced to the penitentiary for a term of not less than 2 nor more than 12 years. He appeals from this conviction, contending that his confession was obtained by constitutionally impermissible means, that he was not proved guilty beyond a reasonable doubt, and that his counsel at trial was incompetent. He further contends that certain evidence and

exhibits were improperly admitted, that certain instructions were erroneously given, and that certain remarks in the State's closing argument were inflammatory and constituted reversible error.

The record discloses that a safe and its contents were taken some time between the evening of December 11 and about 9:30 A.M. December 12 from the locked premises of the Manor Coffee Shop in Elgin, where defendant's wife, Linda, was employed as a waitress. The three doors, windows and skylight of the shop bore no signs of forcible entry, and all keys to the premises were entrusted to persons other than defendant's wife. The day following the burglary Linda Underhill worked only two hours of her normal shift and left claiming illness and did not return to work thereafter.

On January 11, 1966, Elgin police officers found the remnants of what was once a safe on the shoulder of Spaulding Road, east of Griffin Road, in Cook County. On January 16, 1966, at about 7:00 P.M., defendant and his wife were picked up by Elgin police while driving a motor vehicle in the city of Elgin. They were taken to the police station, placed in separate cells, and booked for deceptive practices in connection with an investigation of some forgeries they were suspected of having committed. Defendant was also charged with driving without a license.

While incarcerated, defendant and his wife were separately questioned about the above burglary. On the morning of January 17, 1966, at about 9:30 or 10:30, defendant allegedly made an oral confession admitting his participation in the burglary, and his wife did likewise around 2:00 that afternoon. Thereafter, when defendant was asked to sign a written statement, he requested permission to call his attorney, which was granted. Upon being unable to reach his attorney defendant did not sign any statement.

(Appendix)

A preliminary hearing was held on March 29, 1966, and on April 4, 1966, defendant and his wife were indicted for burglary.

On May 9, 1966, defendant and his co-defendant wife, represented by private counsel, moved to suppress their oral confessions on the basis of involuntariness, charging that they were induced by promises of leniency and threats of other prosecutions against her. At the hearing on that motion the promises of leniency or threats were controverted by the interrogating police officers who did admit, however, to having a discussion with defendant concerning the possibility of probation for his wife, wherein they indicated they would not oppose such probation. But the officers emphatically denied promising defendant leniency for his wife, with regard to a prosecution for forgery, if he confessed to the burglary. Although defendant and his wife repudiated their confessions, the court denied their motion to suppress as to both confessions.

Defendant and his wife were tried jointly in a jury trial commencing May 10, 1966. The principal witnesses for the State were the police officers who testified that, among other things, defendant admitted burglarizing the coffee shop by use of a duplicate key obtained through his wife's assistance, opening the safe taken therefrom in his basement with a crowbar and screwdrivers, and dumping the dismantled safe out on Spaulding Road. They further testified that defendant's wife, outside defendant's presence, admitted abetting the burglary by taking the back door key of the shop, giving it to her husband, and returning it after he made a duplicate thereof. The officers at the trial, again denied making any promises of leniency regarding defendant's wife, stating that they only told defendant, in response to an inquiry by him, that they would not oppose probation for her. The State then introduced into evidence the fol-

lowing six exhibits: (1) two keys, one of which the owner of the Manor Coffee Shop testified opened the back door to his shop at the date of the burglary, (2) the key taken from the person of the defendant at the time of his arrest which he allegedly admitted using to gain entrance to the shop and which, when tested subsequent to the burglary, fit the lock on the back door but did not open it, (3) five pieces of metal, which once constituted a safe, and which defendant allegedly identified as the safe he removed from the coffee shop, and (4), (5) and (6) a crowbar and two screwdrivers taken, at defendant's direction, from his home and automobile, respectively, which he allegedly admitted were used to open the safe and which the prosecution's expert witness from the crime laboratory indicated could have been the tools used to dismantle the safe, and that paint pigment found on the crowbar was the same as paint pigment on the safe.

Defendant and his wife each took the stand in their own behalf and denied participating in the burglary, specifically repudiating their confessions, and introduced an alibi corroborated in part by defendant's stepfather. During defendant's direct testimony he admitted that he had twice before been convicted of burglary and had previously been arrested for assaulting his father-in-law.

The State's Attorney, in his closing argument, suggested that the reason exhibit (2) did not open the back door of the coffee shop was that the locks were changed after the burglary, although there was no direct evidence introduced at trial of any change of locks. (In his direct examination of the owner of the coffee shop, the State's Attorney sought to elicit information concerning a change in locks subsequent to the burglary, but defense counsel's objection to this line of inquiry was sustained by the trial court.) Defense counsel objected, and the court instructed the jury to disregard any remark unsupported by the evidence. The prosecution also argued that defend-

ant's previous convictions reflected on his credibility, and enumerated the two burglary convictions and referred to "* * * one other incident * * *" he did not recall at the time. Defendant's objection to the "other incident" without specification was sustained. Thereafter, defendants were found guilty of the crime charged, from which conviction he prosecutes this appeal.

In support of his contention that the above confessions should have been suppressed, defendant argues that they were obtained through coercion and inducement, as evidenced in part by the failure to bring him promptly before a judicial officer in accordance with section 109-1 of the Code of Criminal Procedure, (Ill. Rev. Stat. 1965, chap. 38, par. 109-1,) and that he and his wife were interrogated without the benefit of the procedural safeguards to their constitutional rights set forth in *Miranda* v. *State of Arizona,* 384 U.S. 436, 86 S. Ct. 1717, 16 L. Ed. 2d 694.

[1] The trial court determined these questions by a preliminary hearing and found that the confessions were voluntary. On review such determination will not be disturbed unless manifestly against the weight of the evidence, or unless the court has committed an abuse of discretion. (*People* v. *Ackerson,* 37 Ill. 2d 117, 224 N.E. 2d 849; *People* v. *Spencer,* 27 Ill. 2d 320, 189 N.E. 2d 270.) At the preliminary hearing, defendant testified that he was held *incommunicado* for approximately 15 hours after his arrest and not allowed to call his lawyer, and that if he made any confession it was induced by the promise of leniency for his wife. Defendant's wife testified that she also was held *incommunicado* for about 15 hours after her arrest, and that the police threatened to prosecute her for adultery if she did not confess. Both defendants then repudiated that they had made confessions or admissions. The police officers in question denied making any threats or promises of leniency, and

stated, with regard to their discussion with defendant concerning probation for his wife, that they had merely informed him they would not oppose such probation while pointing out that it was not their prerogative to grant probation. They further stated that defendant was never denied the opportunity to call his lawyer and that he in fact was allowed to do so but that the attorney could not be reached.

[2-4] The evidence at this hearing was contradictory and while the record does indicate that the defendants were not promptly presented before a magistrate as required by section 109-1 of the Code of Criminal Procedure, such delay did not of itself vitiate the confessions but was merely a factor to be considered on the question of the voluntariness of the confessions. (*People* v. *Harper,* 36 Ill. 2d 398, 223 N.E. 2d 841.) There is substantial evidence in the record to support the trial court's finding of the voluntariness and we will not disturb it on review. We note that the standards laid down in *Miranda* are not applicable here since defendant was tried before the date of their prospective application, June 13, 1966 (*Johnson* v. *State of New Jersey,* 384 U.S. 719, 86 S. Ct. 1772, 16 L. Ed. 2d 882), and fundamental fairness does not require their application to this case. *People* v. *McGuire,* 35 Ill. 2d 219, 220 N.E. 2d 447.

[5, 6] Defendant's argument with respect to the admissibility of the State's exhibits is a corollary to his initial contention that his confession was inadmissible. Since we have decided that issue in favor of the confession's admissibility, it follows that the admission of exhibits (2) through (6) was proper since the confession establishes their relevance to this prosecution. It further follows that exhibit (1) was properly admitted for the sake of comparison with exhibit (2) to establish if the latter exhibit could have opened a door to the shop at the date of the burglary. Its admission was especially

necessary since the record indicates that perhaps the locks on the shop had been changed subsequent to the burglary and the trial court had improperly precluded the State from eliciting this information.

Defendant next maintains that "It is the law of this State that the voluntary confession of one person made after the commission of the crime cannot be admitted against a codefendant unless made in the presence of the codefendant and assented to by him," (*People* v. *Hodson,* 406 Ill. 328, 334, 94 N.E. 2d 166, 169) and that therefore it was error for the court to admit his wife's confession without giving a cautionary instruction to the jury that the confession should be considered only as to the wife's guilt.

[7-9] Defense counsel was apprised of the nature of the wife's confession at the preliminary hearing on the motion to suppress. At no time, including his post-trial motion, did he make a request for a separate trial or object to the admission of the wife's confession. Nor did he ask for or submit a cautionary instruction concerning the proper purpose of that confession. Therefore, defendant may not under the circumstances challenge the admissibility of the confession without a limiting instruction since, as held in *People* v. *Bartz,* 342 Ill. 56, 64, 173 N.E. 779, 782, "A defendant must make a timely objection to the introduction of a confession on a specific ground or he is not in a position to complain of its admission in evidence upon a review of the case. *People* v. *Robinson,* 308 Ill. 398, 139 N.E. 599; *People* v. *Bopp,* 285 Ill. 396, page 408, 120 N.E. 790; *McCann* v. *People,* 226 Ill. 562, 80 N.E. 1061; *O'Donnell* v. *People,* 224 Ill. 218, 79 N.E. 639, 8 Ann. Cas. 123. It is not the duty of the trial court to instruct the jury that a confession, when admitted, may be considered only as against its author, unless the codefendant desiring such an instruction, requests it."

[10, 11] Defendant also maintains that certain remarks of the prosecution in its final argument were inflammatory, that certain instructions were improper, and that both these remarks and instructions constitute reversible error. While, in his brief, defendant enumerates several allegedly improper statements, we need consider only those remarks objected to at trial since statements not objected to are waived. (*People* v. *Donald,* 29 Ill. 2d 283, 194 N.E. 2d 227.) As previously mentioned, those remarks were the prosecution's suggestion that the locks on the shop had been changed subsequent to the burglary, and its comment that defendant had committed, in addition to his two prior convictions for burglary, "one other offense". Defendant's objections to both remarks were sustained and the jury instructed to disregard any statement not supported by the evidence. Moreover, with regard to the latter remark, the record reveals that defendant himself, on direct examination, admitted his prior arrest for assault, thereby vitiating the impropriety of the remark. We therefore find that the court's admonishment was sufficient to correct any prejudicial effect produced by the prosecution's statements. We further find that defendant's contention with respect to certain instructions is spurious and that these instructions were properly given.

We next consider defendant's interrelated contentions that the State failed to prove the *corpus delicti* of the crime of burglary, since his confession is not competent evidence of same, and that he was not proved guilty beyond a reasonable doubt since his conviction was based solely on his and his wife's uncorroborated extra-judicial confessions.

[12-15] It was incumbent upon the State to show an unauthorized entry into the Manor Coffee Shop with the intent to commit a felony or theft therein. (See Ill. Rev. Stat. 1965, chap. 38, par. 19-1.) It is clear that the unauthorized entry may be proved by circumstantial evidence,

and that the accompanying intent to commit an offense may be inferred from the fact that a larceny was actually committed. (*People* v. *Franceschini,* 20 Ill. 2d 126, 169 N.E. 2d 244.) It is also clear, contrary to defendant's argument, that a voluntary confession may be considered along with other evidence to establish the *corpus delicti,* (*People* v. *Melquist,* 26 Ill. 2d 22, 185 N.E. 2d 825; *People* v. *Lueder,* 3 Ill. 2d 487, 121 N.E. 2d 743.) From an examination of all the evidence in the case, it is our judgment that the State not only proved the *corpus delicti* of the burglary but established defendant's criminal liability for the burglary beyond a reasonable doubt. The police testified concerning defendant's confession to the crime and the details he recited thereof. These details were corroborated by circumstantial evidence and the inference arising therefrom. For example, there was no sign that the coffee shop had been forcibly entered, thereby suggesting the use of a key. The safe and the tools defendant claimed he opened it with were found at the places indicated by him. Although defendant claimed an alibi, corroborated by his wife and stepfather, this was merely one fact before the jury. There was substantial competent evidence to sustain the jury's finding of guilty. We will not substitute our judgment for that of the trier of facts where the evidence is merely contradictory, including situations where an alibi is offered on behalf of the accused.

[16, 17] Finally, defendant complains that his counsel at trial was incompetent, thereby denying him his rights to counsel and due process of law guaranteed under the Federal and State constitutions. He particularly charges that the following series of omissions by trial counsel evidence an incompetent representation: the failure to suppress the confession of defendant's wife in that it was made outside defendant's presence, the failure to object to the testimony of his wife's confession and move to strike it, the failure to ask for a separate trial because

of his wife's confession, the failure to tender a cautionary instruction to the jury and the failure to object to certain remarks of the prosecution in its final argument. However, in this case the defendant is represented by counsel of his own choice and "the court has held, almost without exception, that the failure of such counsel to exercise care and skill in the trial case does not afford a basis for reversing a judgment of conviction." (*People* v. *Morris*, 3 Ill. 2d 437, 444, 121 N.E. 2d 810, 815.) From an examination of the record, we cannot say that defendant's representation was so inadequate as to violate the standards laid down for private counsel. Therefore, defendant must in this case bear the consequences of his chosen attorney's representation.

For the reasons stated above, the decision of the circuit court of Kane County is affirmed.

Judgment affirmed.

Page of Tr. Ct. Record

6 Indictment returned in the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois, on April 4, 1966, in words and figures as follows:

The Grand Jurors, chosen, selected and sworn, on the first Monday of February, 1966, in and for the County of Kane, in the State of Illinois, in the name and by the authority of The People of the State of Illinois, upon their oaths present: that

Donald F. Underhill and Linda L. Underhill late of said County and State aforesaid, on, to-wit: the 12th day of December in the year of our Lord One Thousand Nine Hundred Sixty-Five at and within the said County of Kane, in the State of Illinois, aforesaid, committed the offense of Burglary in violation of Section 19-1 of Chapter 38 of the Illinois Revised Statutes in that

Donald F. Underhill, without authority, knowingly entered into a building at 555 North McLean Boulevard, the building of Roy Andresen, Leo Andresen, and Earl Handy, doing business as Andresen Brothers Co-Partners, which building is known as the Manor Coffee Shop in the City of Elgin, County of Kane and State of Illinois, with the intent to commit therein a theft or felony; and

Linda L. Underhill, committed the offense of Burglary in violation of Section 19-1, Chapter 38 of the Illinois Revised Statutes, in that she either before or during the commission of said burglary, and with the intent to promote or facilitate said burglary, solicited, aided or abetted Donald F. Underhill in the commission of said burglary, in that she unlawfully

obtained and delivered to said Donald F. Underhill a key to said premises, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

William R. Ketcham
State's Attorney in and for
said County of Kane

14 Motion filed by defendant May 9, 1966, after service of due notice in words and figures as follows:

MOTION TO SUPPRESS CONFESSION

Now comes the defendants, Donald F. Underhill, Linda L. Underhill and Phyllis L. Follman, and move this honorable Court to suppress the putative confessions allegedly made by each herein for the reasons that same were not made voluntarily and as grounds for said motion, state as follows:

1. That the following excerpts are taken from the transcript of testimony of officer David John Jensen of the Police Force of the City of Elgin, State of Illinois, given on the 29th day of March, 1966, at the preliminary hearing into the charges which are the subject of this indictment referring to the alleged confession of the defendant, Donald F. Underhill:

(Mr. McKenney:) Q. Officer Jensen, when you were questioning Donald Underhill did you make any promise of leniency toward his wife if he should agree to testify?

A. No, sir. The only thing I may put in here, he asked if we would keep her out of it and Sgt.

Stegle told him that we would not fight any probation for her but we would not leave her out of the case.

Q. This was right before he made the admission to you, is that correct?

A. I don't recall if it was in the middle, before, or after.

Q. Sgt. Stegle said they would not fight any probation for her if he would cooperate, was that his statement to the best of your memory?

A. I think he was questioning us, to give us the complete story if we could let her off, and we told him we couldn't do this. If she was to apply for probation that we would not fight it.

2. That before and during the making of the alleged confessions herein, by the defendants, Phyllis L. Follman and Linda L. Underhill, insulting remarks, promises of leniency and threats were made to both defendants to induce and coerce them into confessing to the crime for which they are indicted.

That examples of said remarks are as follows:

(a) Officers Stegle and Jensen told Mrs. Follman that they knew she was sleeping with defendant, Donald F. Underhill, and that if she did not talk they would inform said Donald F. Underhill's wife of said alleged relationship.

(b) Officers Stegle and Jensen told defendant, Phyllis L. Follman, that if she did not talk they would see to it that she served time and that things would go easy with her if she did talk.

(c) Officers Stegle and Jensen told defendant, Linda L. Underhill, that they would go easy on her and get her probation if she talked and that they

really just wanted to put her husband, defendant, Donald F. Underhill, behind bars, and that they would see to it that she got probation if she talked and that things would go very hard with her if she did not talk.

(d) Officers Stegle and Jensen told defendant, Donald F. Underhill, that they would put his wife behind bars if he did not talk.

/s/ Harold C. McKenney
Attorney for Defendants

Covey & McKenney
Attorneys at Law
88 Grant St.
Crystal Lake, Illinois
459-0832

64 Defendant's Motion for a new trial filed on May 27, 1966, after service of due notice in words and figures as follows:

1. That the Court improperly admitted into evidence the alleged oral confessions of the defendants, Donald F. Underhill and Linda L. Underhill, though objection was timely made by both defendants to the introduction of said alleged confessions by both defendants on the grounds:

(a) Said alleged confessions were purportedly given at a time when both defendants were being held incommunicado and without charge in the city jail of Elgin, Illinois, and after both defendants had requested and been denied the right to contact legal counsel to represent them, and were without counsel representing them while

they were being questioned and allegedly con-
65 fessing to the crime with which they are charged herein, and while they had not been advised of their rights to advice of counsel and to remain silent or any other of their rights guaranteed by the Constitution of the United States or of the State of Illinois.

2. Said confessions were admitted into evidence against both defendants before a corpus delecti of the crime itself was proven against either defendant.

3. Prosecution exhibits numbers one (1) through six (6) inclusive, were admitted into evidence improperly as no connection between said exhibits and either of the defendants was shown during the trial, nor were prosecution exhibits five and six (5) and (6), shown to be relevant to any issue concerning said trial, all over objections properly made by defendants.

4. The closing argument of the prosecution was improper and prejudicial to the defendants in that it did not relate to the evidence adduced during the trial, and contained spurious, degrading and derogatory references and remarks about the defendants which were inflammatory in nature and tended to improperly influence the jury against the defendants and their characters, which had not been put into issue during said trial.

5. That the evidence adduced by the state from the testimony of the witnesses it produced was conflicting and contradictory and insufficient to support a verdict of guilty as charged in the indictment.

/s/ Harold C. McKenney
Attorney for Defendants

90 Order for issuance of Capias against Donald F. Underhill and Linda L. Underhill and fixing bail at $5,000.00 each.

Arraignment of Donald Underhill and Linda Underhill on April 7, 1966, notation is made that a copy of the indictment together with a list of witnesses was served upon them and their attorney and that each upon arraignment say for their plea that they and each of them are not guilty of the crime of burglary in manner and form as charged in the indictment, further that the cause be continued to May 9, 1966, and remanding defendant Linda Underhill to the custody of the Sheriff of Kane County.

93 Order continuing the bail of Donald Underhill in the amount of $6,500.00.

94 Order entered May 9, 1966, denying defendant's motion to suppress confession.

95 Trial begins, jurors are selected to try the case, and the cause is adjourned to May 11, 1966.

97 Trial continued on May 11, 1966, testimony of witnesses heard, arguments of counsel made, defendant's motion for finding of guilty at the close of all evidence made and denied, jury instructed and retires to consider verdicts.

98 Jury's verdicts returned in words and figures as follows:

> "We, the jury, find the defendant, Donald F. Underhill, guilty of Burglary, and we further find from the evidence that the said defendant,

Donald F. Underhill, is now about the age of 28 years."

and

"We, the jury, find the defendant, Linda L. Underhill, guilty of Burglary, and we further find from the evidence, that the said defendant, Linda L. Underhill, is now about the age of 29 years."

Both Defendants are thereupon remanded to the custody of the Sheriff of Kane County and the date of hearing of post trial motions is set for May 19, 1966.

99 Order June 1, 1966, continuing hearing for post trial motions.

100 Further Order June 13, 1966, continuing hearing of post trial motions to July 11, 1966.

101 Order July 5, 1966, noting the entry by each of the defendants of their post trial motion for a new trial, and that the court heard the arguments of counsel and being fully advised in the premises denied the motion as to each of the defendants. Further order that leave is granted to Harold C. McKenney, defendant's attorney to withdraw as their attorney and the Court thereupon appointed Lester James Galvin and Ernest R. Akemann Public Defenders to represent the defendants. Notation made that defendant, Linda L. Underhill, thereupon moved for leave to be released from probation, and the cause was continued until July 11, 1966, for the report of a probation

officer, as to defendant Linda L. Underhill, and both defendants are remanded to the custody of the Sheriff of Cook County.

104 Order dated July 5, 1966, in words and figures as follows:

This cause coming on to be heard on the Motion of Defendants herein, by their attorney, Harold C. McKenney, for a new trial, and the Court having heard the argument of counsel and being fully advised in the premises,

It Is Hereby Ordered That the Motion for a new trial is denied.

It Is Further Ordered That leave be given to defendant, Linda L. Underhill, to file her Petition for Probation herein,

It Is Further Ordered That leave be given to defendant, Linda L. Underhill, to file her Petition for Probation herein,

It Is Further Ordered That leave be given attorney Harold C. McKenney to withdraw his appearance as attorney of record herein for Donald F. Underhill. Dated July 5, 1966

Enter: /s/ John S. Petersen
Judge
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105 Hearing had in aggravation and mitigation of the offense on July 11, 1966, and defendant Donald F. Underhill sentenced to the Illinois State Penitentiary for a crime of Burglary for a term of not less than 2 years nor more than 12 years.

(Appendix)

119 Report Of Proceedings At The Hearing Of The Cause On May 9, 1966. Mr. Barry E. Puklin, Assistant State's Attorney, Appeared For The People. Mr. Harold C. McKenney Appeared For The Defendants.

121 It was agreed between Court and counsel that the cause the State would proceed upon would be the charge of Burglary against Linda and Donald Underhill.

122 "The Court: Has your wife been in jail all this time?

Donald Underhill: We haven't been able to renew a bond because the house wasn't paid for.

The Court: What is your motion?

Mr. McKenney: Motion to suppress the confession, Your Honor, based upon the involuntariness. It sets out facts evidencing promises of leniency and certain threats.

The Court: Well, I guess we better wait until she gets here.

Mr. McKenney: I suppose so.

The Court: (To Clerk) Tell him to bring that gal in here.

I guess you have got the laboring oar."

Defense counsel argued that the motion spoke for itself and he asked that the Court inquire as to the truth of the State's denial.

125 Defense counsel asked that Linda Underhill be sworn.

(Appendix)

126 LINDA L. UNDERHILL, one of the defendants in the cause, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McKenney.

I live at 652 Logan Avenue, in Elgin, Illinois, and I am the person who is charged with the crime of Burglary in this matter. Two police officers whose names I don't know took me to jail on January the 16th, of this year and they threw us in jail. They did not take me out of my cell until the following mid-morning. They did not tell me that I was under arrest. I was not charged officially with anything, and they did not hand me any papers saying I was charged with anything.

128 They just locked me up. I was driving on the street on the way to the hospital to see our baby, and they picked us up and said to come to the Police Station with them. I drove my car to the Police Station and they followed me. Sgt. Stegle took me from my cell the next day. No one was with him when he took me. When I got into the room there were two other detectives there; one was Lt. Theis and the other was Officer Jensen. The officers did most of the talking. Sgt. Stegle asked me what I knew about some checks. He never mentioned the burglary at that time. About three hours later in the Detective Bureau the same police officers talked with me about the burglary. Sgt. Stegle said that they knew about the burglary and they wanted me to tell about it.

He told me that if I didn't give him the answers he wanted he was going to charge me with adultery. He told me he would let me go if I told him. He told me that if I was found guilty he'd see to it that I got probation; in return for the probation he asked me to testify against my husband.

Cross Examination by Mr. Puklin.

I think Officer Siete was present part of the time with officers Lt. Theis, Sgt. Stegle and Officer Jensen. He was behind me. Donald Underhill was not in the room when this took place. Donald was in the car with me when I was picked up. They put him in the squad car and I drove our car. They did not tell me why we were being arrested. They took my driver's license and told me to follow them. I was in my car alone when we drove to the station. It was on a Monday around 2:00 P. M. that Lt. Theis said he'd let me go. They had talked to me previous to this, and he said, just as long as I wouldn't tell them what they wanted, to get back into my cell.

Q. On the first occasion when they talked to you, wasn't that when you told them what part you took in the burglary?

A. No, I didn't tell them anything.

Q. At any time did you ever tell them anything?

A. No.

I never told them I took part in the burglary. I never made a confession. I did not make any admissions.

(Appendix)

133 DONALD F. UNDERHILL, one of the Defendants, being first duly sworn, was examined and testified as follows;

134 *Direct Examination by Mr. McKenney.*

I am the husband of defendant, Linda Underhill, and I am charged with the crime of burglary herein. I arrived at the Police Station at the same time as my wife did. I asked for a telephone call from Lieutenant Smith, and he refused me. He refused to let me make a telephone call. I asked him what I was charged with, and he told me "driving without a driver's license". I was not served with any papers for driving without a driver's license. They locked me up. I had arrived at the Elgin Police Station about 7 o'clock that night and I remained in the Cell until 10:30 the next morning. I didn't see anybody from the time they locked me up until 10:30 the next morning. At 10:30 Lt. Stegle came and got me, and I asked him if I could see my wife, and he said, "After we talk." Officer Jensen was with him when he took
136 me out of my cell. We went to the Detective Bureau Room. I think Sib Siete was in and out of the room during the conversation. Siete did not take part in the conversation. At first it was just Sgt. Stegle and Officer Jensen who took part in the conversation, and when I would not tell them anything Lt. Theis came in. They showed me what must have been twenty five checks, and Sgt. Stegle pointed at a safe behind me and told me he wanted to know about that, and I told him that I did not know anything about it. He told me he found a key to the business where

the safe was at in my possession. I still wouldn't tell him anything so he told me we can't convict you of anything, but we can convict your wife of this forgery. And he held up the bunch of checks, and he said "now, if you tell us about this burglary, we will let her go on this forgery." And then Lt. Theis came in and he promised me that she wouldn't be charged at all if I'd tell him I did the burglary.

138 I kept asking him if he really would. And he said I can take the blame for everything, the checks and the burglary. And if I didn't, then he'd have to let me go but they would send her to Dwight. And if I did, nobody but me could go to jail.

Cross Examination by Mr. Puklin.

My wife and Phyllis Follman were not present at this time. They would not let me communicate with my wife at all. It was about twenty minutes after seven on Sunday night when I asked Lieut. Smith to make a telephone call. I had two conversations with the detectives on the 17th. The first time they asked me about it, and I would not tell them they put me back in my cell. That was about 10:30. Around ten minutes to eleven they brought me out again.

139 THOMAS STEGLE, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

140 *Direct Examination by Mr. Puklin.*

I am a Police Officer, and I am acquainted with Donald Underhill, and his wife, Linda Underhill. I

had occasion to see Donald Underhill in the Detective Bureau of the Elgin Police Department about 9 or 9:30 A. M. on January 17, 1966. The persons present at that time were Officer David Jensen, Donald Underhill and I, and Lieut. Theis was in and out. Lieut. Theis took no part in the conversation. I had a conversation with Donald Underhill in regard to a burglary which took place in the Manor Coffee Shop in Elgin. During this conversation nobody in my presence made any offers of leniency or promises of probation.

141 Q. Was there any conversation at all about probation?

A. When I first started talking to Donald, I told him that I felt that his wife was involved as I felt that she had gotten the key while working there. And at this time he says, "I'll tell you all about it if you keep her out of it." And I said I'm not making any promises. And then later on when Lt. Theis was talking to Donald Underhill, that was later in the day, Donald asked about probation for Linda.

142 Lt. Theis told him—he said, well, "The Police Department wouldn't object to probation for her, but we will go along with whatever the State's Attorney's Office recommends."

Nobody in my presence promised to let Linda go free if Donald would plead guilty to the burglary and forgery. There was no conversation in my presence about her being sent to Dwight Reformatory. I did not state to Donald Underhill, and nobody stated to him, that they couldn't convict him of anything, and they could convict her of forgery. The first time I

saw Donald Underhill was on January 17th in the
143 lockup of the Elgin Police Department. I took him out of the lockup. He did not ask to make any phone calls at that time.

Q. Did he ever ask to make a phone call?

A. Yes, after we talked about the burglary. He was asked if he'd give a written statement and he said he'd like to contact his attorney first. And he was allowed to use the telephone at that time. And he tried to call John McNerney, but Mr. McNerney wasn't in. I did not make any threats that I would get to Linda Underhill if he did not cooperate with me.

Q. Do you know how it happened that Donald Underhill was in the lockup that evening?

A. That morning?

Q. That morning.

A. He was—he was in on a traffic violation. I believe it was no operator's license. And, also, we wanted to talk to him about some checks.

Q. Do you know if he had been ticketed for driving with no operator's license?

A. Well, he was in the lockup. It was for no operator's license. I'm pretty sure on that.

144 *Cross Examination by Mr. McKenney.*

To the best of my recollection, Donald Underhill was actually charged with the crime of no operator's license.

The Court: Q. He was, or he was not?

The Witness: He was.

The Court: Thank you.

By Mr. McKenney: Q. Do you know that for a fact, sergeant?

The Witness: A. No, I don't.

Q. All right.

A. I know he was in for a traffic violation. I wasn't there when he was picked up for the traffic violation; all I know is what the report read.

145 *Redirect Examination by Mr. Puklin.*

On this day I had occasion to see Linda Underhill in the detective bureau of the Elgin Police Department. Officer Dave Jensen was present with me at that time. This was shortly before noon. I did not threaten her "of committing adultery". I did not tell her that I'd let her go if she'd answer the questions that I was going to ask her. I did not promise her that she'd get probation if she'd help me in testifying against her husband. I talked to her reference burglary at the Manor Coffee Shop and asked her what blary at the Manor Coffee Shop and asked her what part she played in it. She at first denied it.

147 I told her I'd already talked to Donald and that he had told me about it. She then told me that she was working there prior to the burglary and Donald had told her to get a key, and that he more or less threatened her, and that she knew that she had better get a key. She took the key from the counter and took it and gave it to Donald. He had one made and she took the key and placed it back on the counter. No promises were made. No threats were made, she did not request to call an attorney. I don't believe there was any discussion between Linda and me relative to probation.

(Appendix)

148 DAVID JOHN JENSEN, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct Examination by Mr. Puklin.

I'm a detective for the Elgin Police Department and am acquainted with Linda and Donald Underhill whom I saw on the 17th day of January, 1966, at the Detective Bureau of the Department. The time was around 9 or 9:30. Sgt. Stegle, Donald Underhill and I were present. Lt. Theis, I think came in on two occasions. Lt. Theis took no part in the questioning. I had a conversation with Donald Underhill relative to the burglary at the Manor House Coffee Shop in Elgin. In my presence Office Stegle did not state to Donald Underhill that they couldn't convict him of anything, but that they could convict his wife of forgery. There was no conversation relative to the fact that if he would plead guilty to the burglary and forgery they'd give probation to his wife.

150 Q. Were there any—was there any discussion of probation at all?

A. Yes, sir.

Q. Would you please tell the Court what discussion there was?

A. I think Lt. Theis was in the Detective Bureau at the time when Donald asked this of Sgt. Stegle and myself, if we could get probation for his wife. And Lt. Theis answered him that we couldn't assure any probation. We could not fight it. We'd go along with the State's Attorney's recommendation.

(Appendix)

During the conversation Donald Underhill admitted a part in the burglary. He was not given any promise of leniency and no deals were made for what he would say at this time. I had occasion to see Linda Underhill on this date just prior to Lunch on this same day. It was about 11:30 in the morning. Officer Stegle was present with me in the Detective Bureau of the Police Station. No one in my presence at this time accused Linda Underhill of adultery. No one told her they would let her go if she testified against her husband, Donald. She admitted a part in the burglary at this time. There was no discussion with her at all with regard to probation.

152 *Cross Examination by Mr. McKenney.*

I believe Lt. Theis was in there when Donald asked Sgt. Stegle about probation. I do recall that Lt. Theis did have a conversation with him concerning probation.

153 In other words, it was a three-way conversation. Lt. Theis walked in at that time and he made his admission and Sgt. Stegle was there. They may have both talked of this. I recall being in Court on March 29, 1966, before Judge Krause at a preliminary hearing concerning this matter, and I recall giving testimony at that time. I recall being asked the following questions and having given the following answers:

Q. "Officer Jensen, when you were Donald Underhill, did you make any promise of leniency toward his wife if he should agree to testify?

A. No, sir. The only thing I may put in here,

he asked if we would keep her out of it and Sgt. Stegle told him that we would not fight the probation for her, but we would not leave her out of the case."

154 That answer was correct when I gave it, and is correct now. I do think it was Lieut. Theis who said that, but Sgt. Stegle was there. It may have been
155 Sgt. Stegle who made that statement. Lieut. Theis was not present during the questioning of Linda Underhill. I believe I was in the room at all times. There was no discussion with Linda Underhill concerning probation or her moral character, nor was there any discussion concerning what would happen to her if she didn't talk; and there was no discussion concerning her going to Dwight or to prison. I don't believe that Lt. Theis questioned Donald as to the burglary or its events. I think he overheard some of it by coming in.

157 Patrolman Lloyd and possibly Patrolman Volmer were the officers who had arrested Linda and Donald Underhill on the night before. I believe there was a traffic violation against Donald Underhill. I believe with "a revoked license". I don't know whether or not he was charged with revoked driver's license or any other charge.

158 Q. Do you know who gave the orders to pick up Donald Underhill?

A. I believe Sgt. Stegle did.

Q. Do you know upon what charge or for what purpose?

A. The attempted forgery at the Union Bank.

Q. That was the reason he was to be picked up, is that correct?

A. Yes, sir.

ELMER THEIS, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

Direct Examination by Mr. Puklin.

I am a Lieutenant of the Elgin Police Department, and I am acquainted with Donald and Linda Underhill who were in custody at the Department on January 17, 1966.

159 Q. Do you know the basis for this custody?

A. They were picked up and charged with investigation, deceptive practice.

Q. And both of them were charged with the same thing?

A. Yes, sir.

They were picked up on the 16th day of January, and I saw Donald Underhill on the 17th day of January in my office and on one other occasion. I believe he requested to see me, and I talked to him in the squad room. I really don't know what time of day it was; I was in and out of the office. He was being talked to by Sgt. Stegle and Officer Jensen.

160 I believe it was before noon. I did not take part in this conversation at all. I probably heard some, but I can't tell you what they were talking about. I didn't hear anyone make any promises or threats to Donald Underhill. I did not hear anybody say that they had nothing against Donald, but they could

prove that Linda was involved in a forgery, and if he would plead guilty, they would let her go. I believe it was in the afternoon when he requested to see me, and this was the second time I was in his presence. One of the officers, either Jensen or Stegle, was present at that time. Donald wanted to know if he could make a deal with me by making a buy or giving information against a subject for pornographic material or some type of dope; and if he and Linda would leave the State. I told him I was not in a position to give him consideration. I told him that it had never occurred that the Judge would let us decide whether a subject gets probation. I told him that as far as I was concerned I would oppose it if I were asked. And that as far as his wife, if the Judge asked, I couldn't oppose probation. There were
162 no promises that if he would cooperate with me I would go to bat for Linda. On January 17, I saw Linda Underhill at the Police Station. I never talked to her. I think Sgt. Stegle and Officer Jensen were with her at that time. They were talking at Stegel's desk, something about checks. To my knowledge no promises of leniency were given to Donald or Linda Underhill. There have not been any threats that if they didn't cooperate extra pressure would be put upon them. There was no discussion in my presence about Linda being sent to Dwight.

162 Q. At any time during your conversation with Donald Underhill, did he admit to you or in your presence a part in the burglary of the Manor Coffee Shop?

163 A. He told me in the squad room that he'd say—or tell everything if we'd go ahead on this whereby we'd set up somebody else on the purchase of drugs or the purchase of pornographic material. And he was not made any promises or deals.

Cross Examination by Mr. McKenney.

I don't know what time the conversation took place with Donald Underhill. I was not on this particular case. When he asked to see me I took either Jensen or Stegle with me. I don't remember which one.

164 Q. Okay; now, you say he was charged. With what was he charged?

A. Investigation of deceptive practice.

Q. And he was actually charged with that?

A. Yes, sir.

Q. When was he charged with that?

A. On the 16th of January, 1966.

Q. What time?

A. I don't have his booking slip here.

Q. Who signed the charge?

A. I don't know.

Q. Had you seen the charge before you saw him?

165 A. I saw it on the property envelope. I didn't see the actual lodging of the charge.

Q. Do you know who issued the order at the Police Department to pick him up?

A. I know that the office was checking on some checks that was stolen at a hospital and being cashed. And that is what the original pickup was on because his name was on one.

That was the deceptive practices I am talking about. If they saw him, they were to bring him in. I saw Linda Underhill being talked to by Sgt. Stegle. I was in and out of the office several times. I had no conversation with Linda.

166 *Redirect Examination by Mr. Puklin.*

Donald Underhill was under investigation originally for the checks, and then information was given to us that Linda worked at a place that was burglarized, and left the day after it was burglarized and the safe being found. I don't know whether Linda was charged with driving a motor vehicle with no sticker at the time of her arrest.

167 NORMAN SMITH, being first duly sworn, was examined and testified on behalf of the People as follows:

Mr. Puklin: If the Court please, it has been brought to my attention that Lt. Smith, unless he is out in the hall right now, was off duty and they were trying to locate him. And seeing that the jury has gone, I wonder if I could be permitted to call him tomorrow morning if I don't find him in the hall right now.

The Court: Get him right now.

I am a Lieutenant in the Police Department of Elgin, and I am acquainted with Donald Underhill, whom I saw on January 16, 1966, when two of our officers brought him into headquarters. I believe Officers Lloyd and Lundy were the two officers. I was

officer in charge at the time, and it was my duty to book persons brought in, and make arrangements to hold him.

168 Q. Was he booked at that time?

A. Yes, he was.

Q. What was the charge?

A. He booked at that time for—he had no operator's license, but he was booked for investigation of deceptive practice also.

Linda Underhill was with him at that time, and she was booked for investigation of deceptive practices. They were informed of the nature of the charge against them.

169 Q. At any time did either of these people ask to make a phone call?

A. I don't recall them specifically asking to make a phone call.

When I was through booking them they were locked up and held.

169 *Cross Examination by Mr. McKenney.*

Q. Lt. Smith, on the back of your folder you have, "No city vehicle tag." Was Linda Underhill charged with that?

A. No.

Q. Was there ever any discussion of charging her with that?

170 A. I believe there was some discussion with the officers that brought her in.

Q. She was driving the car and they were going to charge her with that?

A. Yes.

Q. Then, Lt. Smith, if she was driving the car and there was a discussion of charging her with driving with no valid driving city sticker, how did you charge Donald Underhill with driving with no valid driver's license?

A. Because the officer, when the car was stopped, seen him driving the car and then when they—before they stopped they saw them switch places.

Q. Now, you say he was charged with investigation relative to deceptive practices.

A. Yes.

Q. Both of them?

A. Both of them.

Q. Had there been a complaint signed and warrant issued?

A. No, there hadn't.

Q. Oh, there hadn't.

A. To my knowledge, there hadn't been.

Q. Under whose orders had they been picked up?

171 A. We had been alerted to look for them from Lt. Theis of the Detective Bureau.

Q. Lt. Theis. But there was no warrant, no complaint—

A. To my knowledge, there wasn't.

Q. —signed by anyone?

A. No.

(Appendix)

171 Counsel for the Defendant argues in support of the Motion to Suppress the Confessions.

175 Counsel for the People argues in opposition to the Motion to Suppress Confessions.

178 Counsel for Defendants reply to the Argument of Counsel for the People.

180 The Court: Motion denied.
Mr. McKenney: Okay.
The Court: Draw an Order.
Start at 10:00 o'clock tomorrow morning.

From Report of Proceedings at the trial:

250 I did nothing else at this time. On January 11, 1966, I went out on Spaulding Road three blocks east of Gifford Road with Sgt. Stegle, and found a safe in a ditch, on the north side of the road.

251 It was in four parts, People's Exhibit No. 3, when I first saw it at that location on Spaulding Road. We brought the safe to the Detective Bureau and later it was taken to the Crime Laboratory in Joliet. We kept it in the Detective Bureau in Elgin on a table. It was not taken off the table for anything other than to go to Joliet.

I saw Donald Underhill at 9 or 9:30 on the morning of January 17, 1966, at the Detective Bureau in Elgin.

253 Q. Who was present?
A. Sgt. Stegle, myself.
Q. Was anybody else present?
A. On occasion, Lt. Theis was.

(Appendix)

Sgt. Stegle asked Donald Underhill if he knew anything about the safe on the table. At first Donald Underhill said no, he knew nothing of it. Sgt. Stegle told him that he knew Linda had worked at this restaurant where the safe was missing after the burglary, and she never came back to work, and that he suspected Linda had something to do with it, and possibly obtaining a key. Donald Underhill said "I will tell you about the safe if you keep Linda out of it." Sgt. Stegle, Lieut. Theis and I were present when the conversation as to her getting probation came up. Lieut. Theis and I think Sgt. Stegle said we couldn't do this, although we would not oppose probation. We would go along with the recommendation of the State's Attorney's Office, the reason for this, she being directly involved in it. Sgt. Stegle asked him whether or not that was the safe that he had taken, and he said it was. We asked him where he had dumped it, and he said on Spaulding Road just off Gifford Road. He wasn't sure of the name of this road. We went to his home where he had broken the safe open in the basement. He had stated that there was approximately $240-$250 in cash in the safe, and some checks. He said he had burned the checks in a large ashtray. We asked where he had pried the safe open, and he said in the basement of his home at 359 May Street. We asked him if he would take us down there and show us where and how, and he said he would. At his home he took us to the basement and showed us on the floor a white chalky substance and stated he had tried to wash

it down. This is where he had pried the safe open. He said it was from the lining of the safe. He went to a work bench and picked up a crowbar and gave it to me.

People's Exhibit 4 I know to be the same bar by the tag that was put on there by Sgt. Stegle and my-
257 self at that time. We took the bar, and then Donald and Sgt. Stegle and myself went over the bypass bridge, Route 20 in Elgin which crosses the Fox River, and he showed us where he threw a small cash box taken out of the safe. We never retrieved the cash box.

We then went to the post office garage when Donald Underhill's car was in storage and from the trunk of it, he gave us two screwdrivers, which he also used to pry the safe open. We brought those to Police Headquarters also. Those are People's Exhibits 5 and 6. I know that they are the same that Donald gave us because of the tag we put on them. We asked Donald Underhill if he would like to give us a written statement as to the burglary.

258 He stated that he would like to call his attorney first. He called an attorney, John McNerney, and from the conversation there was no answer or he wasn't in. People's Group Exhibit 3 and Exhibits 4, 5 and 6 have been kept in the Elgin Detective Bureau and also in the Illinois Crime Laboratory. They were kept on a table in our Detective Bureau. I went with Officer Stegle when he took these items to Joliet.

(Appendix)

I was not with him when he picked them up. Prior to noon of that same day in the Detective Bureau, I had a conversation with Linda Underhill. Sgt. Stegle asked questions of Linda, and he asked her what part she had in this burglary. First she denied it. Sgt. Stegle stated that Donald had given us the key to the restaurant which he used to gain entrance. Then she admitted to Stegle and myself that Donald had asked her to get the key for the back door, which she had done. And after Donald making a duplicate, she had returned the key where she had gotten it. There was no other conversation pertaining to the burglary.

Cross Examination by Mr. McKenney.

I accompanied Sgt. Stegle to a Ben Franklin Store and another store to see if a duplicate key had been made up to the premises of the Manor Coffee Shop.

Q. Do you recall on March the 29th, 1966, roughly five weeks ago, at a preliminary hearing of this matter being asked the question: (Reading)

"Q. Please relate the conversation between yourself and Linda Underhill that took place on January the 17th in the Detective Bureau."

And do you recall giving this answer:

"A. We—I told Donald Underhill I thought his wife had gotten a key while working there and this key was used in the burglary to gain access to the building. A few minutes later he said, 'Yes, I asked Linda to get a key for me which I had made, at the Elgin Key and Lock, a duplicate of.'"

(Appendix)

Do you remember that?

A. Yes, sir.

Q. Did you investigate at the Elgin Key and Lock?

A. Not at that time, no, sir.

The discussion concerning probation for Linda was that he would tell us all about it if we could keep Linda out of it. I am sure that Sgt. Stegle was there when this discussion took place.